

August 25, 2017

Honorable Stacy Ruble  
Secretary  
Postal Regulatory Commission  
901 New York Avenue, NW, Suite 200  
Washington, DC 20268-0001

Dear Mr. Ruble:

Pursuant to 39 U.S.C. § 407(d)(2), the U.S. Postal Service (Postal Service) is providing a copy of modifications to Annexes A and C of the following Data Sharing Agreement (DSA) between the Postal Service and Japan Post: Agreement for the Electronic Exchange of Customs Data, signed by the Postal Service May 21, 2014. This agreement as signed by Japan Post was filed with the Commission on May 24, 2017 (Attachment 9). The Postal Service has marked the non-public version of the DSA as "Confidential" and "Non-Public" because it contains information considered confidential and commercially sensitive by the affected postal operator and the Postal Service.

The Postal Service considers certain portions of the document to be protected by 39 U.S.C. § 410(c)(2) and thereby not subject to mandatory disclosure under the Freedom of Information Act (FOIA). Further, the document contains the commercial information of the affected postal operator, and as such, certain portions of the instrument are subject to protection under Exemption 4 of the FOIA. Consequently, we have attached an application for non-public treatment of these documents under 39 C.F.R. § 3007.21. See Attachment 1. In addition, we respectfully request that the Postal Regulatory Commission coordinate with us in the event that the documents become subject to a FOIA request, so that we can engage in appropriate consultations with the affected postal operators.

Please feel free to contact me if further information would be helpful.

Sincerely,

Anthony Alverno  
Chief Counsel,  
Global Business and Service Development

Enclosures

**ATTACHMENT 1****APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR  
NON-PUBLIC TREATMENT OF MATERIALS**

In accordance with 39 C.F.R. § 3007.21 and Order No. 225,<sup>1</sup> the United States Postal Service (Postal Service) hereby applies for non-public treatment of the enclosed modification to a Data Sharing Agreement (“DSA modification”) between the Postal Service and a postal operator. The Postal Service is transmitting this DSA modification to the Postal Regulatory Commission (Commission) in accordance with 39 U.S.C. § 407(d). A redacted version of the DSA modification is enclosed as Attachment 2. The Postal Service hereby furnishes below the justification required by 39 C.F.R. § 3007.21(c) for this Application.

**(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);**

The materials designated as non-public consist of information of a commercial nature that would not be publicly disclosed under good business practices as well as information that may impact law enforcement interests. In the Postal Service’s view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).<sup>2</sup> Because the portions of the materials that the Postal Service seeks to file under seal fall within the scope of information not

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<sup>1</sup> PRC Order No. 225, Final Rule Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009.

<sup>2</sup> In appropriate circumstances, the Commission may determine the proper level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that “likely commercial injury” should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and to grant its application for their non-public treatment.

**(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;**

In the case of agreements such as the one transmitted here, the Postal Service believes that any postal operator that is party to the agreement is the only third party with a proprietary interest in the materials. The Postal Service identifies as an appropriate contact person Ms. Michaela George. Ms. George's phone number is (202) 268-5522, and her email address is MIGeorge@uspis.gov. The Postal Service has already informed the participating postal operator, in compliance with 39 C.F.R. § 3007.20(b), about the nature and scope of this filing and about the postal operator's ability to address any confidentiality concerns directly with the Commission.<sup>3</sup>

**(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;**

Pursuant to 39 U.S.C. § 407(d), the Postal Service is transmitting a DSA modification with a foreign postal operator that is an agency of a foreign government. The DSA modification includes information concerning the transmission of electronic data between the Postal Service and the foreign postal operator. Such electronic data is used by law enforcement entities to ensure compliance with various U.S. laws and

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<sup>3</sup> The Postal Service acknowledges that 39 C.F.R. § 3007.21(c)(2) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's filing might be construed as beyond the scope of the Commission's rules, the Postal Service respectfully requests a waiver to designate a Postal Service employee as the contact person under these circumstances.

regulations, including those relates to imports, exports, and mailability. The Postal Service may also use the electronic data for operational and customer services purposes. The redactions applied to the DSA modification protect the specifics of the electronic transfer of data between the Postal Service and its counter-party.

**(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;**

If the portions of the DSA modification that the Postal Service determined to be protected from disclosure due to their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it could suffer commercial harm. The details of electronic data transfers — including the content, timing, and method of such transfers — are commercially sensitive, and would not be disclosed under good business practices. If this information were made public, competitors of the Postal Service and its counter-party, including private entities and other postal operators not a party to this DSA, could use the information to identify strengths and vulnerabilities in operations and customer service. Postal operators not currently a party to any DSA also might use the information to their advantage in negotiating future DSAs with the Postal Service.

Additionally, if the redacted information were to be disclosed publicly, it would assist entities seeking to circumvent law enforcement efforts to ensure compliance with various U.S. laws and regulations, including those governing imports, exports, and mailability.

The Postal Service considers the use of the redacted information to gain commercial advantage and to circumvent law enforcement to be highly probable outcomes that would result from public disclosure of the redacted material.

**(5) At least one specific hypothetical, illustrative example of each alleged harm;**

Harm: Public disclosure of the redacted terms of the DSA modification would provide other foreign postal operators negotiating power to obtain similar terms from the Postal Service.

Hypothetical: The negotiated terms are disclosed publicly on the Postal Regulatory Commission's website, which another postal operator sees. That other postal operator then uses that publicly disclosed information to insist that it must receive similar, or better, terms when negotiating its own DSA with the Postal Service.

Harm: Public disclosure of redacted information in the DSA modification would be used by competitors to the detriment of the Postal Service.

Hypothetical: A competing delivery service obtains unredacted versions of the DSA modification from the Postal Regulatory Commission's website. The competitor analyzes the DSA modification to determine strengths and weaknesses of the Postal Service's operational and customer service abilities. The competing delivery service then targets the area of weaknesses to gain leverage in the marketplace, thereby significantly cutting into the revenue streams upon which the Postal Service relies to finance provision of universal service.

Harm: Public disclosure of information in the DSA modification would be used detrimentally by the foreign postal operator's competitors.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of the DSA modification from the Commission's website. The competitor analyzes the DSA modification to determine strengths and weaknesses of the foreign postal operator's operational and customer service abilities. The competitor

then targets the areas of weakness to gain leverage in the marketplace, thereby significantly cutting into the revenue streams of the foreign postal operator.

Harm: Public disclosure of information in the DSA modification would be used to circumvent U.S. and foreign laws and regulations.

Hypothetical: Entities or individuals seeking to circumvent U.S. laws and regulations or those of the Postal Service's counterparty obtain an unredacted copy of the DSA modification from the Commission's website. Those entities or individuals then use the information regarding electronic data transfer to circumvent efforts by domestic or foreign law enforcement agencies to enforce laws and regulations governing, *inter alia*, imports, exports, and mailability.

**(6) The extent of protection from public disclosure deemed to be necessary;**

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for international delivery products (including both private sector integrators and foreign postal operators), as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service (including other postal operators) should not be provided access to the non-public materials.

**(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and**

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

**(8) Any other factors or reasons relevant to support the application.**

None.

***Conclusion***

For the reasons discussed, the Postal Service respectfully requests that the Commission grant its application for non-public treatment of the identified materials.

**Annex A – Technical specifications and message standards to be used**



**Annex C – The product(s) for which data will be sent and/or received**

